of a notification of the conviction in a newspaper under section 15, might be reversed on the ground that a long time had elapsed since the conviction and in any case this medicine was not now being imported by the appellant from Hong Kong for sale in Singapore. The Magistrate, in making the order, no doubt had in mind that the provisions of this section are designed to protect the public and even if the result of invoking them might be to harm the appellant's business, the interests of the public in this case required him to make this order. I can find nothing in the case to suggest that it was not a proper order to make in all the circumstances and in my view there are no sufficient grounds for disturbing it.

Appeal dismissed.

Solicitors: *Battenberg & Talma.*

ABDUL HAMID v. PUBLIC PROSECUTOR

[A. Cr. J. (Smith J.) August 18, 1956]

[Seremban — Criminal Appeal No. 11 of 1956]

Prevention of Corruption Ordinance, 1950, ss. 3 & 12 — What amounts to an offence under s. 3 of the Ordinance — Distinction between "consent" and "sanction" to prosecute — "Rights and powers" in s. 376(iii) of the Criminal Procedure Code (Cap. 6) — Scope of.

Summary trial — Evidence of similar facts — Same transaction — Finding of 'guilty' whether to be formally recorded.

In this case the learned Judge held that to establish an offence under section 3 of the Prevention of Corruption Ordinance, 1950, it is not necessary to show that the favour sought was within the power of the accused, but the favour shown must then have been within the power of the accused's principal.

There is an essential difference between a sanction and a consent. A prosecution can be sanctioned without any deep consideration of the particular case: full consideration is required for consent since "consent" is an act of reason, accompanied with deliberation, the mind weighing, as in a balance, the good and evil on each side. A sanction is therefore no evidence of consent.

The very general words "rights and powers" appearing in section 376(iii) of the Criminal Procedure Code are sufficient to permit a Deputy Public Prosecutor to consent to a prosecution under the Prevention of Corruption Ordinance.

Where there are other offences of the same kind which are all part of one and the same transaction evidence thereof is properly admissible.

There is no requirement in section 173(m)(2) of the Criminal Procedure Code that the finding of "Guilty" shall be formally recorded unless the accused pleads guilty. It is sufficient if the record shews clearly that the Court did find the accused guilty.

Cases referred to:—

(1) *R. v. Metz* 11 Cr. App. R. 164.

(2) *Hiralal Badlo v. R.* (1950) M.L.J. 96.

(3) *Raju v. R.* (1953) M.L.J. 21.

(4) *R. v. Rearden* 4 F. & F. 76; 176 E.R. 473.

MAGISTRATE'S CRIMINAL APPEAL.

Edgar Joseph (Jr.) for the appellant.

L. A. Massie (Federal Counsel) for the respondent.

Smith J. : — The essential facts of this case were as follows.

The complainant applied for a post in the Home Guard. Hearing nothing he asked the accused about his application, the accused being at the time an Assistant Home Guard Officer and in charge of the Home Guard in Kuala Pilah. The complainant asked the accused whether there was a vacancy for a Permanent Staff Instructor. The accused told the complainant to write out an application for the post which the complainant did. The complainant handed the application to the accused who said that the complainant must pay him $100 or he would not recommend him. The complainant, who at the time had only $40, gave the $40 to the accused who said that the complainant was not to worry and that he would get the post. This was on 15th February 1956. On 23rd February the accused sought out the complainant and asked if the complainant had the balance of $60. The complainant had only $20 which the accused took. On 28th February the complainant approached the accused asking if his appointment had been approved. The accused asked for the balance of $40. The complainant gave accused the balance of $40. The accused had no authority to recruit personnel into the Home Guard.

The accused was tried upon the following charge which relates to the final payment of $40 :—

That you on the 28th day of February, 1956, at Kuala Pilah in the State of Negri Sembilan being an agent of the Government of the Federation of Malaya namely an Assistant State Home Guard Officer corruptly accepted the sum of $40 from Samsudin bin Haji Salam as a reward for doing an act in relation to your principal's affairs, namely for the purpose of recruiting the said Samsudin into the Home Guard as a Sergeant in the Home Guard, and that you have thereby committed an offence contrary to and punishable under Section 3 of the Prevention of Corruption Ordinance, 1950.

It was submitted first that there had not been a consent to the prosecution as required by section 12 of the Prevention of Corruption Ordinance, 1950 (hereinafter called 'the Ordinance') which reads :—

"12. A prosecution under this Ordinance shall not be instituted except by or with the consent of the Public Prosecutor."

It was objected that Exhibit P1 was not signed by the Public Prosecutor personally and was a sanction under the Criminal Procedure Code and therefore not a consent. Exhibit P1 reads as follows :—

"The Officer-in-Charge,
Criminal Investigation,
Negri Sembilan,
Seremban.

SANCTION TO PROSECUTE UNDER SECTION 129 OF THE CRIMINAL PROCEDURE CODE (CAP. 6)

In exercise of the powers conferred upon me by section 129 and section 376(iii) of the Criminal Procedure Code, I, Leslie Alexander Massie, Deputy Public Prosecutor for the State of Negri Sembilan do hereby sanction the prosecution of Abdul Hamid bin Mohd. for an offence punishable under section 3(a) of the Prevention of Corruption Ordinance No. 5 of 1950 alleged to have been committed by him at Kuala Pilah on or about the 28th day of February 1956.

Dated this 26th day of April 1956.

sd. L. A. Massie
Deputy Public Prosecutor,
Negri Sembilan & Malacca."

I do not consider that consent must be given personally by the Public Prosecutor. In my opinion the very general words "rights and powers" appearing in section 376(iii) of the Criminal Procedure Code (F.M.S. Cap. 6) are sufficient to permit a Deputy Public Prosecutor to consent to a prosecution under the Ordinance.

There was more substance in the argument that no consent had been given. The learned Deputy Public Prosecutor argued that section 12 of the Ordinance did not stipulate a particular form which the consent should take and that a sanction implied consent. I agree with the first argument but respectfully disagree with the second.

There is an essential difference to my mind between a sanction and a consent. A prosecution can be sanctioned without any deep consideration of the particular case: full consideration is required for consent since " 'Consent' is an act of reason, accompanied with deliberation, the mind weighing, as in a balance, the good and evil on each side" (*Stroud* 3rd Edition vol. I page 582). The sanction was therefore no evidence of consent. However I satisfied myself from evidence given by the learned Deputy Public Prosecutor that he had in fact fully applied his mind to the particular case and had consented before signing Ex. P1 (*R. v. Metz*[1], followed).

Secondly it was argued that since the accused had no power himself to recruit personnel for the Home Guard he had committed no offence under the Ordinance, applying the principles of *Hiralal Badlo v. R.*[2]. In that case a soldier was offered an inducement to release a person who had been illegally arrested: it was held that no offence was disclosed since the favour sought was "not in relation to the affairs" of the principal since the arrest had been made outside the premises of the principal and in an area where the soldier had no power to make an arrest.

In this case it is clearly the affair of the Federal Government to recruit personnel for the Home Guard. Whether the accused had the power to recruit or not is immaterial: the question is for what purpose did the complainant give the money, was that purpose in relation to the affairs of the accused's principal and did the accused receive the money knowing the intention with which it was given by the complainant. I respectfully agree with the learned President where he says:—

"The Ordinance does not say anything about the act being within the competence of the agent. If it did, no one, or at any event very few, could be prosecuted. It is quite obvious that a P.C. who releases a prisoner in return for a bribe is not competent to release that person. A Magistrate who takes a bribe and acquits a person would be competent, but it would be absurd to argue that the former could not be prosecuted, and the latter could."

Thirdly it was strongly argued for the appellant that evidence of similar facts prejudicial to the accused had been admitted without reasonable cause and that no specific reason had been given for leading evidence thereon contrary to the principles enunciated in *Raju's*[3] case.

I cannot agree that the evidence of the earlier instalments of the bribe were admitted without reasonable cause. As the learned President has noted in his Grounds of Judgment the three incidents really form one whole: the last incident, the subject of the charge, cannot be understood without reference to the earlier incidents. Where there are other offences of the same kind which are all part of one and the same transaction evidence thereof is properly admissible (see *R. v. Rearden*[4]).

From the record it does not appear that before evidence of the earlier incidents was led the prosecution informed the Court for what purpose that evidence was being led. It is highly desirable that this should be done and, when not done, may put the accused, particularly when undefended, in great difficulties. In this particular case the accused was represented. The record reveals no objection to the evidence being led nor to any submission thereon at the close of the prosecution case. There is no statutory requirement that the purpose for which the evidence of this kind is led should be stated: it is a sound matter of practice. In this case I do not consider that the appellant was in any way prejudiced by the failure to state the purpose: it must have been self-evident. I am satisfied that here there was no omission in the proceedings

which has occasioned a failure of justice. (See section 422 Criminal Procedure Code).

The remaining points in this well-argued appeal may be disposed of shortly. It was submitted that the conviction was bad since the learned President had not recorded a formal finding of 'Guilty' but proceeded straightaway to conviction. Section 173 (m) (2) reads as follows :—

"If the Court finds the accused guilty or if a plea of guilty has been recorded and accepted the Court shall pass sentence according to law."

There is no requirement that the finding of 'Guilty' shall be formally recorded unless the accused pleads guilty. It is sufficient if the record shews clearly that the Court did find the accused guilty. In this case before convicting and sentencing the appellant the learned President delivered a long judgment in open Court which made that fact abundantly clear.

Several points were taken with reference to certain evidence which I consider the learned President admitted and weighed correctly.

I do not consider the sentence in any way excessive.

The appeal against conviction and sentence is dismissed.

Appeal dismissed.

Solicitors: *Joseph & Son.*

HASHIM & ANOR. v. PUBLIC PROSECUTOR

[C. A. (Mathew C.J., Abbott and Spenser Wilkinson JJ.) December 6, 1954]

[K. L. — F.M. Criminal Appeal No. 65 of 1954]

Penal Code ss. 34, 300, 324, 392 and 397 — Whether it is permissible upon a charge of murder to convict of robbery — Dangerous weapon.

Criminal Procedure Code (Cap. 6), ss. 166 and 165 — Alternative charge.

Evidence — Statement to the police which resulted in the discovery of weapon used in the commission of offence.

The appellants were jointly charged with two others with the murder of one Chan Ah Leong. Apart from the confessions made by the two appellants before a Magistrate and their statements made from the dock at the trial there was no direct evidence as to which of the two appellants inflicted the injuries which caused the death of the deceased. Both the appellants admitted that they were present at the killing but each alleged that the other had struck the fatal blow. The assessors with whom the learned trial Judge agreed found that there was no satisfactory proof of common intention by both appellants to kill the deceased or to inflict fatal injuries upon him; and came to the conclusion that it was the first appellant rather than the second appellant who inflicted the injuries. There was evidence that the first appellant made a statement to the police which resulted in the discovery of the weapon, an iron pipe, which had been "used in the murder" and a hidden handkerchief bundle containing some of the deceased's belongings.

Held: (1) in the circumstances of the case neither of the appellants could be convicted of murder unless it could be found that the injuries were inflicted in furtherance of a common intention under the provisions of section 34 of the Penal Code; (2) information supplied by a person in custody which resulted in the discovery of the weapon used in the commission of the offence does not lead to the discovery of the weapon. It leads to the discovery of the fact that the weapon is concealed to the knowledge of the informant, and if the weapon is proved to have been used in the commission of the offence, the fact discovered is relevant, but in this case the words "used in the murder" deposed to by the Police are inadmissible; (3) a length of iron piping can hardly be described as a "deadly weapon" and section 397 of the Penal Code does not, like section 324, extend the meaning of dangerous weapon.

Upon a charge of murder it is not permissible to convict of robbery. If at the outset the appellants had been charged with an alternative charge of robbery they would have been entitled to make an application for these charges to be tried separately and such application would have been successful.

Cases referred to:—

(1) *Pulukuri Kotayya v. R.* L.R. 74 I.A. 65.

(2) *Norottam v. R.* (1888) A.W.N. 95.

COURT OF APPEAL (CRIMINAL).

K. L. Devaser for the 1st appellant.

2nd appellant in person.

B. Sheldon (Federal Counsel) for the respondent.

The judgment of the Court was delivered by:—

Spenser Wilkinson J. : — The two appellants were jointly charged with two others with the murder of one Chan Ah Leong, a cigar hawker. At the close of the case for the prosecution Counsel for the Defence submitted that there was no case against the 3rd and 4th accused and, the prosecution agreeing with this, the 3rd and 4th accused were acquitted. The two appellants were called upon for their defence.

At the conclusion of the evidence the learned trial Judge asked the assessors the following two questions :—

"(1) Are you satisfied that the deceased died from shock and haemorrhage resulting from injuries he received on 20.10.53?

(2) Are you satisfied from all the evidence that both accused on 20.10.53 inflicted the wounds described by the Doctor with the intention of causing death or with the intention of causing such grave injuries that in the natural course of nature would result in death?"

To the first of these questions both assessors gave an affirmative answer, but to the second question the first assessor stated that he was satisfied that the 1st appellant did inflict the wounds with the intention of causing fatal injuries but he gave the benefit of the doubt to the 2nd accused and added that he was satisfied that the 2nd appellant intended only to commit robbery. The second assessor returned a similar answer to the second question. The learned trial Judge